

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 7640 of 2018**

Ashok Roy S/o Late Shri S.C. Roy, Aged About 63 Years, R/o House No.3, Mohan Nagar Kumharpara, Jagdalpur, District -Jagdalpur -Bastar Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Sports And Yooth Welfare Department, Mahanadi Bhawan Mantralaya, new Raipur Chhattisgarh
2. The Deputy Director, Sports And Yooth Welfare Department, Jagdalpur, District Bastar, Chhattisgarh
3. The Joint Director, Account Treasury And Pension, Jagdalpur District Bastar Chhattisgarh

---- Respondents

For Petitioner	:	Shri Palash Tiwari, Advocate
For State	:	Shri D. Wankhede, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****26.11.2018**

The order under challenge in the present writ petition is Annexure P-1 whereby the respondents have ordered for recovery of an amount of Rs.3,05,325/- from the dues payable to the petitioner on his retirement.

2. Contention of the counsel for the petitioner is that the petitioner was initially appointed as a lower division clerk with the respondents way back in the year 1980 and he stood retired from service on 30.04.2018.

Subsequent to his retirement, the respondents have now issued the impugned order holding that the petitioner has been wrongly paid an amount of Rs.3,05,325/- by way of increments from the beginning which he otherwise was not entitled for as the petitioner has not passed Hindi typing examination.

3. Contention of the counsel for the petitioner assailing the impugned order is that the said order is bad on two counts. Firstly the order of recovery has now been issued after the petitioner retired from service. Secondly, the order of appointment issued to the petitioner there was no such condition assigned that he had to pass Hindi Typing Examination within any stipulated period.

4. State counsel, however, opposing the petition submits that it is a case where the authorities found that the petitioner had not passed Hindi typing examination and therefore he would not have been entitled for the annual increments that have been paid to him and as such the excess amount which the petitioner has derived in the intervening period is being ordered to be recovered.

5. Having heard the contentions put forth on either side and on perusal of the record what is undisputed is that the petitioner retired from service on 30.04.2018 from the post of Upper Division Clerk which is a Class-III post. The impugned order has been passed on 07.05.2018 i.e. after his retirement. The alleged excess payment was paid to the petitioner during 1981 to 2018. All along when the petitioner was in service, the respondents had never raised any question so far as the competency of the petitioner or the fact that the petitioner had not passed Hindi Typing Examination. What

is relevant at this juncture to taken note is the decision of the Supreme Court in the case of ***State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.*** reported in **2015 AIR SCW 501** where the Supreme Court has cited certain situations under which it has been specifically held that the recovery is impermissible under law. The relevant situations have been reproduced hereinunder:

“11. Recovery of excess payment, made from employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). In such circumstances recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year of the date of his retirement on superannuation.

“12. xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

6. Taking into consideration the aforesaid situations and comparing the same with the facts of the present case which would clearly reflect that the impugned order has been passed pursuant to the retirement of the petitioner. Undisputedly, the petitioner retired from service as a Class-III employee. It is also not in dispute that the petitioner was not at fault for obtaining the alleged erroneous increment. It is also not a case that the petitioner has made any misrepresentation for obtaining the said annual increments. Moreover, the error that has been crept on the part of the respondents was of the period about 38 years prior to the issuance of the impugned order Annexure P-1. All the circumstances in the present case squarely fall within the situations which have been envisaged by the Supreme Court in the case of Rafiq Masih (supra). Thus, the recovery so made against the petitioner also would be one which is otherwise impermissible under law.

7. The impugned order thus is not sustainable and the same deserves to be and is accordingly set aside with consequences to follow.

**Sd/-
P. Sam Koshy
Judge**